

§ 205.5

40 CFR Ch. I (7–1–04 Edition)

(2) Any facility or site where any tests conducted pursuant to this part or any procedures or activities connected with such tests are or were performed; and

(3) Any facility or site where any test product is present.

(c)(1) An EPA Enforcement Officer, once admitted to a facility or site, will not be authorized to do more than:

(i) To inspect and monitor test product manufacture and assembly, selection, storage, preconditioning, noise emission testing, and maintenance, and to verify correlation or calibration of test equipment;

(ii) To inspect products prior to their distribution in commerce;

(iii) To inspect and photograph any part or aspect of any such product and any component used in the assembly thereof that are reasonably related to the purpose of his entry.

(iv) [Reserved]

(v) To obtain from those in charge of the facility or site such reasonable assistance as he may request to enable him to carry out any proper function listed in this section.

(2) [Reserved]

(3) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer or by one who acts for the manufacturer.

(d) For purposes of this section:

(1) An “EPA Enforcement Officer” is an employee of the EPA Office of Enforcement who displays upon arrival at a facility or site the credentials identifying him as such an employee and a letter signed by the Director, Noise Enforcement Division designating him to make the inspection.

(2) Where test product storage areas or facilities are concerned, “operating hours” shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, “operating hours” shall mean all times during which product manufacture or assembly is in operation or all times during which product testing and maintenance is taking place and/or production

or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or product manufacture or assembly being carried out in a facility.

(e) The manufacturer shall admit to a facility or site an EPA Enforcement Officer who presents a warrant authorizing entry. In the absence of such warrant, entry to any facility or site under this section will be only upon the consent of the manufacturer.

(1) It is not a violation of this regulation or the Act for any person to refuse entry without a warrant.

(2) The Administrator or his designee may proceed ex parte to obtain a warrant whether or not the manufacturer has refused entry.

[41 FR 15544, Apr. 13, 1976, as amended at 43 FR 27990, June 28, 1978; 47 FR 57713, Dec. 28, 1982]

§ 205.5 Exemptions.

§ 205.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57713, Dec. 28, 1982]

§ 205.5–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.